

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 3:10-00093

VINCENT ANTA MYERS

MEMORANDUM OPINION AND ORDER

Pending before the Court is Defendant's Motion in Limine Number 1: To Exclude Warrantless Taped Communication (Doc. 47). For the following reasons, this motion is **DENIED**.

Defendant argues that the Court should exclude from evidence three taped conversations which occurred in the home of the defendant. Defendant bases this argument on *State v. Mullens*, 630 S.E. 2d 169 (W. Va. 2007), where the Supreme Court of Appeals of West Virginia held that a warrant is required where an informant secretly records a defendant in his home. That case, however, is not relevant here. The decision in *Mullens* is based on the West Virginia Constitution; the case before this Court is based on federal law. What is relevant to deciding whether or not to exclude the taped conversations is federal precedent, not West Virginia state law. *United States v. Van Metre*, 150 F.3d 339, 347 (4th Cir. 1998) (finding that inadmissibility under state law does not yield exclusion under federal law). The United States Supreme Court has held that the Fourth Amendment does not require a warrant when a government agent records a defendant, unbeknownst to him, within his home during a drug exchange. *United States v. White*, 401 U.S. 745, 749 (1971). Further, the Fourth Circuit, in an unpublished decision, found that *Mullens* does not apply to a motion to suppress in federal court. *United States v. Barefield*, No. 07-4739 (4th Cir. Jan. 7, 2008).

The defendant has failed to cite applicable federal grounds to support his motion to exclude. Accordingly, the motion is **DENIED**.

The Court **DIRECTS** the Clerk to send a copy of this written Opinion and Order to counsel and the defendant, the U.S. Attorney's Office, the U.S. Probation Office, and the U.S. Marshals' Service.

ENTER: January 20, 2011

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', is written over a horizontal line.

ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE